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E. ROBERT SEAYER, CLERK

IN THE  
Supreme Court of the United States

October Term, 1971

No. 70-75

MOOSE LODGE No. 107,

*Appellant,*

v.

K. LEROY IRVIS, *et al.*

OCT 12 1971  
E. ROBERT SEAYER, CLERK

ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF PENNSYLVANIA

MOTION FOR LEAVE TO FILE BRIEF  
*AMICUS CURIAE*  
and  
BRIEF FOR BENEVOLENT AND PROTECTIVE  
ORDER OF ELKS OF THE UNITED STATES  
OF AMERICA AS *AMICUS CURIAE*

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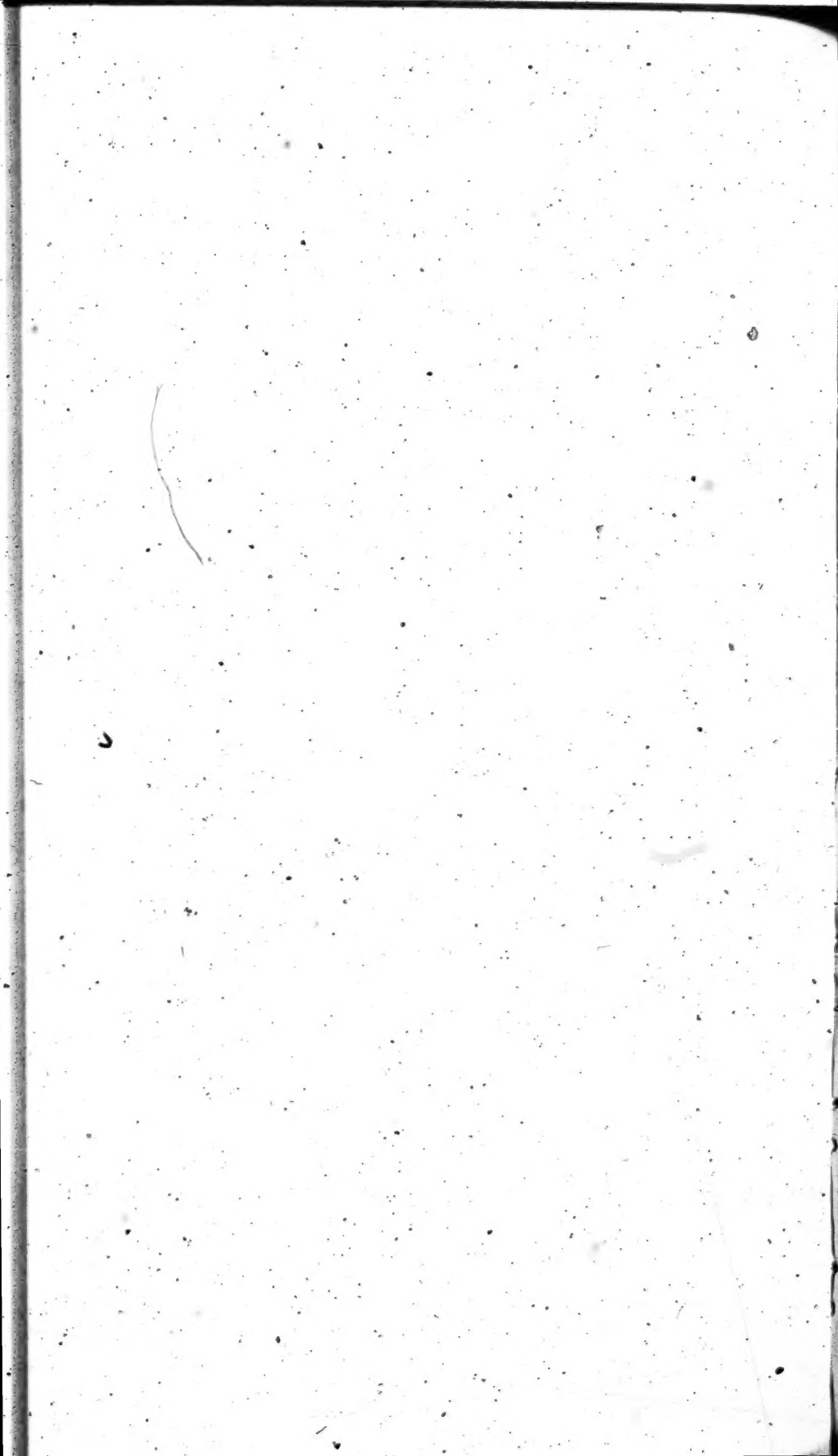
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ARGUMENT IN SUPPORT OF MOTION

The Benevolent and Protective Order of Elks of the United States of America hereby respectfully moves for leave to file a brief *amicus curiae* in this case in support of appellant, as provided under Rule 42, Subsection (3), of the Rules of this Court:

The consent of the attorneys for the appellant has been obtained. The consent of the attorneys for the appellee was requested, but refused.

The Benevolent and Protective Order of Elks of the

United States of America was incorporated in 1895, under appropriate sections of Federal statutes, in the District of Columbia, for benevolent, charitable, educational and literary purposes, and has continued in existence since that time. The total membership of the Order, as of March 31, 1971, was 1,520,731, with 2,164 Lodges, designated as "Subordinate Lodges", located in all of the States and in Puerto Rico, Panama Canal Zone, Guam and the Philippines.

There are 135 Subordinate Lodges in the State of Pennsylvania, with a total membership of 96,343. These Lodges, located in various cities and towns in Pennsylvania, range in size from 32 members to 2,344 members.

The basic issue posed by this case is of deepest concern to all American citizens, whether members of the Benevolent and Protective Order of Elks or not.

That issue is the right of individual American citizens to form private organizations, and, as members of such organizations, to determine their own associates and membership requirements and being free to enjoy these rights socially, without being compelled to exchange these constitutional rights as a prerequisite or condition to enjoying the benefits conferred by a license from the State.

Counsel for appellant have dealt with the constitutional and legal questions involved in an admirable manner, so this brief will be confined solely to factual matters.

Appellant will necessarily concentrate on the particular facts in its own case. In the brief hereby tendered with this motion, the Benevolent and Protective Order of Elks will present facts not covered by either appellant or appellee, in a much broader and more generic fashion.

It is essential that the present uncertainty as to the applicable law be settled. The continued testing (by individuals, legislative bodies, on both sides of this issue) of the constitutional rights involved should be set at rest. The uncertainty now existing has resulted in multitudinous countercharges, threats and litigation, which, if continued, will result in permanent harm to the welfare of all peoples, communities and the nation. This source of potential community tension should be eliminated.

The attached brief, we submit with the sincere hope that it will be of assistance to the Court.

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